

EXHIBIT C

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

- - -

In Re: : Chapter 11
:
: Case No.
W.R. GRACE & CO., et al, : 01-01139 JKF
:
: (Jointly
Debtors : Administered)

- - -

Friday, May 1, 2009

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Oral deposition of PETER VAN
N. LOCKWOOD, ESQUIRE, taken pursuant to
notice, was held at the offices of CAPLIN
& DRYSDALE, One Thomas Circle N.W., Suite
1100, Washington, DC 20005, commencing
at 9:43 a.m., on the above date, before
Lori A. Zabielski, a Registered
Professional Reporter and Notary Public
in and for the Commonwealth of
Pennsylvania.

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MAGNA LEGAL SERVICES
Seven Penn Center
1635 Market Street
8th Floor
Philadelphia, Pennsylvania 19103

1 assigned to the Trust, that the
2 Trust would be able to obtain such
3 coverage, either by agreement with
4 the asbestos insurance companies
5 or through coverage litigation in
6 some coverage court, which
7 coverage litigation might entail a
8 decision by a judge that in some
9 manner or another what the Trust
10 was doing pursuant to the Plan in
11 terms of resolving individual
12 asbestos claims was, in fact,
13 binding on the insurers. That's
14 about the best I can do.

15 BY MR. BROWN:

16 **Q. Okay. To the extent it**
17 **constitutes a settlement of asbestos PI**
18 **claims, is it superseded by Section 7.15**
19 **entitled Insurance Neutrality?**

20 A. That question is almost
21 incomprehensible to me, because Section
22 7.15 is sort of a form selection
23 provision. Essentially, in my view of
24 it, what it does is it says to the extent

1 that there are disagreements about the
2 Trust's rights under transferred
3 insurance assets, those disputes are
4 going to get resolved by the parties, the
5 insurers, and the Trust at a later date
6 in front of a later court.

7 And so some later court
8 would determine whether it was a
9 settlement or not. The 7.15 itself
10 doesn't purport to say whether it is or
11 isn't a settlement. It says essentially
12 that some other court, if necessary, will
13 have to decide that issue because the
14 insurers don't want to have coverage
15 litigation in this bankruptcy case.

16 **Q. All right. But the sentence**
17 **that we are referring to on page 1 says,**
18 **"The Plan constitutes a settlement of all**
19 **Claims and Demands against the Debtors**
20 **on, and subject to, the terms described**
21 **herein and the other the Plan Documents."**

22 A. That is --

23 **Q. My question is, is that**
24 **language superseded by the insurance**

1 **neutrality language that appears in 7.15?**

2 MS. HARDING: Objection.

3 MR. FINCH: Objection, asked
4 and answered.

5 THE WITNESS: I cannot give
6 you any better answer to that than
7 the one I gave you already.

8 You are asking me whether a
9 descriptive sentence in a Plan
10 supersedes a form selection clause
11 in some other part of the Plan,
12 and, to me, that's just -- I don't
13 even understand how one could
14 supersede the other in the first
15 place. I mean, if you can explain
16 to me why you think it supersedes
17 it, maybe I could have a more
18 specific answer.

19 BY MR. BROWN:

20 **Q. Well, why don't you look at**
21 **7.15 A on page 87 of the Plan.**

22 A. Okay.

23 **Q. As I read that sentence,**
24 **other than what appears in the other**

1 **portions of 7.15, nothing in the Plan,**
2 **the Plan documents, the Confirmation**
3 **Order, is to operate or shall operate --**
4 **"shall in any way operate to, or have the**
5 **effect of, impairing any Asbestos**
6 **Insurance Entity's legal, equitable or**
7 **contractual rights, if any, in any**
8 **respect."**

9 A. Yeah?

10 MS. HARDING: Object to
11 form. Is there a question?

12 MR. BROWN: I am reading the
13 language first. Can I finish?

14 MS. HARDING: I am sorry. I
15 thought you were asking a
16 question. I didn't hear it.

17 BY MR. BROWN:

18 **Q. To the extent that the Plan**
19 **or the Confirmation Order constitutes a**
20 **settlement of asbestos PI claims against**
21 **the Debtors, is that going to then be**
22 **binding upon the insurers in coverage**
23 **litigation?**

24 MS. HARDING: Object to

1 form. It calls for a legal
2 conclusion.

3 THE WITNESS: If a coverage
4 court decides that it's a
5 settlement and that it's a
6 settlement that's reasonable and
7 that it doesn't have to be
8 consented to by insurers, then the
9 coverage court will have decided
10 that the settlement isn't
11 impairing the insurers' rights
12 under their policies.

13 That's what I mean by it's
14 up to the coverage court. Your
15 question assumes that for it to be
16 a settlement, it would have to
17 impair the insurers' rights. My
18 limited understanding of insurance
19 law is that that may be true or it
20 may not be true. But what this
21 says is that the Plan and the
22 Confirmation Order aren't
23 purporting to resolve that issue.

24 Your rights are what they

1 specifically (a) under 13.

2 A. I see it.

3 **Q. Is that language intended to**
4 **include any property damage-related**
5 **causes of action?**

6 A. It depends on what you mean
7 by included. What it basically means is
8 that, as I understand it, that the Trust
9 gets the rights; nobody else gets the
10 rights. The Trust can then seek coverage
11 from the insurers.

12 Since the Trust has no
13 asbestos property damage claims to assert
14 against the insurers, it will not be
15 asserting asbestos property claims
16 against the insurers. But the effect of
17 the transfer would mean that, for
18 example, Grace or a property damage
19 claimant could not assert property damage
20 claims under that insurance coverage
21 because those rights have been assigned
22 to the Trust and they are, therefore, no
23 longer available to be invoked or
24 utilized by anybody else.

1 are; you will be able to present
2 them to a coverage court. And the
3 coverage court, if it agrees with
4 you, will say, first, the Plan
5 doesn't control the outcome of
6 this decision because that's what
7 7.15(a) says, and, secondly, you
8 are correct in asserting that this
9 is an unconsented-to settlement or
10 it's not a settlement or whatever
11 defense you have applies. And it
12 will say you win, you don't have
13 any coverage obligations for this
14 claim or these claims or whatever.
15 That's my understanding of how
16 this is supposed to work.

17 BY MR. BROWN:

18 **Q. Okay. I am going to go**
19 **through the Plan and various items. We**
20 **are going to jump around a little bit.**
21 **So why don't we first turn to page 5.**

22 A. I have it.

23 **Q. And the definition -- we**
24 **looked at this earlier -- 13,**

1 **Q. Okay. Let's turn to page 6,**
2 **Asbestos Insurance Coverage Defenses, 6**
3 **and 7.**

4 A. Definition 16.

5 **Q. Correct.**

6 A. I see it.

7 **Q. Did you have a chance to**
8 **read it?**

9 A. Yes.

10 **Q. And there are two exceptions**
11 **that are listed there to asbestos**
12 **insurance coverage defenses?**

13 A. Correct.

14 **Q. And the first one says,**
15 **"...the Plan or any of the Plan documents**
16 **do not comply with the Bankruptcy**
17 **Code..."**

18 **So, as I understand that, if**
19 **in a subsequent coverage action, an**
20 **insurer sought to argue that the Plan or**
21 **Plan documents don't comply with the**
22 **bankruptcy code, they would be precluded**
23 **from doing so by virtue of the**
24 **confirmation of the Plan; is that**

1 at that injunction.

2 I can't recall ever having
3 spent a lot of time thinking about that
4 issue before, but it seems possible that
5 that hypothetical claim could be enjoined
6 by the successor claims injunction in
7 Section 8.5 of the Plan as against
8 Fresenius and Sealed Air.

9 **Q. I want to turn your**
10 **attention now to Section 7.15. We have**
11 **talked about it a little bit already,**
12 **Insurance Neutrality.**

13 A. I have it.

14 **Q. Okay. Other than the**
15 **conditions set forth in (g) under 7.15,**
16 **are asbestos insurance entities bound by**
17 **any other findings or conclusions**
18 **contained in the Plan?**

19 A. Yes, potentially under
20 Section 7.15(j).

21 **Q. Okay. Anything else?**

22 A. Well, yes, two other
23 categories of things. One would be
24 rulings on compliance with the bankruptcy

1 code provisions, which are not under the
2 definition of asbestos coverage defenses
3 preserved, as we had discussed earlier.

4 **Q. Okay.**

5 A. And, secondly, there is a
6 race judicata provision in Section
7 7.15(e) that, in effect, says that if an
8 asbestos insurer actually litigates some
9 claim in the bankruptcy case, it could
10 be -- assuming that otherwise
11 non-bankruptcy principles of race
12 judicata or collateral estoppel would
13 apply, it could be bound by the outcome
14 of any such litigation that it initiated.

15 **Q. Okay.**

16 A. Other than that, I believe
17 the answer to your question, those are
18 the only conditions that I am aware of.

19 **Q. Okay. Would it be correct**
20 **to say that this provision overrides the**
21 **exculpation provision in the Plan which**
22 **appears at Section 11.9?**

23 MR. FINCH: Object to form.

24 MS. HARDING: Object to

1 form.

2 THE WITNESS: Let me turn to
3 Section 11.9. I don't think so,
4 because I think the exculpation
5 provision comes under the heading
6 bankruptcy issues.

7 The exculpation provision is
8 pretty limited. What it applies
9 to are acts or omissions in
10 connection with or arising out of
11 the Chapter 11 cases. And my
12 understanding of what is intended
13 to be covered by that is some
14 claim that one of the parties
15 covered by it engaged in some sort
16 of misconduct during the course of
17 the bankruptcy case -- I don't
18 know -- a claim, to put it
19 personally, the Asbestos Claimants
20 Committee somehow or another
21 breached a fiduciary duty to its
22 constituency by proposing a Plan
23 that this exculpation provision
24 would apply to that sort of a

1 claim or a similar claim against
2 the Debtors.

3 But those types of claims
4 are not insurance coverage claims
5 or defenses. They would just be
6 some sort of -- and, indeed, it's
7 almost inconceivable to me how an
8 insurance company could ever have
9 the sort of claim that would be
10 exculpated by Section 11.9,
11 frankly.

12 BY MR. BROWN:

13 **Q. Well, if they did --**

14 MR. FINCH: Object to the
15 form.

16 BY MR. BROWN:

17 **Q. -- would the exculpation**
18 **provision take precedence over Section**
19 **7.15?**

20 MR. FINCH: Object to form.

21 MS. HARDING: Object to
22 form.

23 THE WITNESS: That question
24 is almost impossible to answer,

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1 because without knowing what the
2 claim is -- I mean, 7.15 addresses
3 specific types of situations
4 having to do with insurance.

5 11.9 addresses claims that,
6 on their face, have no apparent
7 relationship to insurance, and,
8 therefore, to know whether there
9 is any overlap between the two to
10 determine which one would prevail
11 in the event that there was an
12 overlap, you would have to have
13 some idea what kind of claim you
14 are talking about. And, frankly,
15 I have no idea what kind of claim
16 you want me to hypothesize for
17 purposes of that question.

18 BY MR. BROWN:

19 **Q. All right. There are some**
20 **releases that are mentioned in Section**
21 **7.15, and I want you to put those aside**
22 **for a moment.**

23 **Other than the releases that**
24 **are cited in 7.15, are any other releases**

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1 **that appear in the Plan or Plan documents**
2 **binding on asbestos insurance entities?**

3 MS. HARDING: Object to
4 form.

5 THE WITNESS: I would have
6 to give you a very similar answer
7 to the one I just gave you on
8 exculpation because I would have
9 to know what kind of claims you
10 are talking about.

11 7.15 is intended to deal
12 with insurance policy/settlement,
13 insurance settlement, insurance
14 reimbursement situations, and
15 preservation of insurer rights
16 with respect to those types of
17 agreements. Releases in the Plan
18 may or may not cover those
19 situations.

20 As a general proposition, I
21 don't think the Plan purports to
22 release claims by asbestos
23 insurers sort of generically
24 against a whole lot of different

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1 people. There are some specific
2 releases that we have talked about
3 already.

4 Without knowing what sort of
5 a claim you believe the Plan
6 releases and being able to figure
7 out whether that claim ties into
8 the sort of relationships that
9 7.15 -- policy type relationships
10 that 7.15 is intended to address,
11 I really can't answer. I am not
12 trying to evade the question. I
13 just can't answer it for the
14 reasons I stated.

15 MR. BROWN: Okay.

16 (ACC 30(b)(6)-8 and 9 marked
17 for identification at this time.)

18 BY MR. BROWN:

19 **Q. All right. Mr. Lockwood,**
20 **you have before you two documents, ACC-8**
21 **and ACC-9. Let's start with 8.**

22 A. I have it.

23 **Q. Have you ever seen that**
24 **document before?**

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1 A. Yes.

2 **Q. What is it?**

3 A. It is a complaint by The
4 Scotts Company attempting to initiate an
5 adversary proceeding in the Grace
6 bankruptcy case against various insurers
7 and Grace.

8 **Q. Okay. And is the relief**
9 **that is sought by Scotts in this**
10 **adversary complaint as against the**
11 **insurers that are defendants, who are**
12 **also settled asbestos insurance**
13 **companies, enjoined in its totality?**

14 A. As of right now or under the
15 Plan?

16 **Q. Under the Plan.**

17 A. I want to say yes to that,
18 but I would have to say this: I believe
19 that Scotts is asserting claims in this
20 action as asserted additional insured
21 under vendor coverage in W.R. Grace
22 insurance policies, point one.

23 I believe the basis is suits
24 against Scotts for Scotts' liability for